

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

May 12, 2016

Via Certified Mail – Return Receipt Requested

Citizen Suit Coordinator

Environment and Natural Resources Division

Law and Policy Section

P.O. Box 7415

Ben Franklin Station

Washington, DC 20044-7415

RECEIVED ON:

MAY 17 2016

ORC

EPA Region 10

Office of the Regional Administrator

Via Certified Mail – Return Receipt Requested

Administrator Gina McCarthy

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Ave., N.W.

Washington, DC 20460

Via First Class Mail

Administrator Dennis McLerran

U.S. Environmental Protection Agency, Region 10

1200 Sixth Ave., Ste. 900

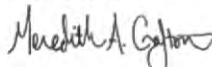
Seattle, WA 98101

Re: Puget Soundkeeper Alliance v. Buse Timber & Sales, Inc.; W.D. Wash. No. 2:15-cv-01460-MJP

Dear Honorable Civil Servants:

Please find enclosed the proposed consent decree for the above-named Clean Water Act citizen suit. The motion for entry of the consent decree has been noted to allow time for your statutory 45-day review.

Sincerely,



Meredith Crafton

Attorney for Plaintiff

cc: Mike Gossler (via email, w/o enclosure)

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)	
)	No. 2:15-cv-01460-MJP
Plaintiff,)	
v.)	
BUSE TIMBER & SALES, INC.,)	CONSENT DECREE
)	[PROPOSED]
Defendant.)	
_____)	

I. STIPULATIONS

Plaintiff Puget Soundkeeper Alliance sent a sixty-day notice of intent to sue letter to Defendant Buse Timber & Sales, Inc. on or about June 25, 2015, and filed a complaint on September 11, 2015, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from Buse's facility in Everett, Washington, and seeking declaratory and injunctive relief, civil penalties and attorneys' fees and costs.

Puget Soundkeeper Alliance recognizes that Buse is an employee-owned company and an important member of the local community, and unable to afford a substantial penalty payment.

Puget Soundkeeper Alliance and Buse agree that settlement of this matter is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

Puget Soundkeeper Alliance and Buse stipulate to the entry of this Consent Decree without

CONSENT DECREE - 1
CASE No. 2:15-cv-01460-MJP

Smith & Lowney, p.l.l.c.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883

1 ii. A site map that represents true site conditions which omits SW grassy
2 area that is not used for industrial activity and which does not drain or
3 connect to any industrial area.

4 iii. Proper descriptions of site surfaces as paved, unpaved or vegetated.

5 iv. All other required BMPs in this Consent Decree or applicable from the
6 ISGP.

7
8 c. Within thirty days of the entry of this Consent Decree, Buse will remove the
9 accumulation of wood debris resulting from the delivery and offloading of logs on,
10 around, and immediately west of its log float beach on Union Slough, and to dispose
11 of this waste properly with other mill wood waste.

12
13 d. Buse will conduct log float beach and ramp, activity in accordance with Buse's
14 Aquatic Lease with Washington State Department of Natural Resources and
15 maintain the ramp and adjacent beach areas as specified in the Aquatic Lease
16 (Attachment A to this Consent Decree) under sections 2.2 Restrictions on Use, 8.2
17 Use of Hazardous Substances, and 8.6 Cleanup.

18
19 e. Within thirty days of the entry of this Consent Decree, Buse will amend its
20 SWPPP to include (1) a description of log float beach and ramp areas and activities,
21 and (2) a listing of potential pollutant sources attributable to activity.

22
23 f. Buse will maintain the non-paved temporary log storage area west of the
24 ramp, where stormwater runoff drains into the Buse facility, applicable BMPs
25 specified in the Ecology's "Draft 2013 Implementation Manual for Log Yards."

26 g. Buse will resume quarterly sampling at DP-1 for all parameters immediately.
27

1 The sample taken on Jan 19, 2016 may be the first sample.

2 h. Within thirty days of the entry of this Consent Decree, Buse will revise
3 description of DP-1 sampling point in its SWPPP to note that the sampling point is
4 only appropriate when the sampler employs a substantial reach with a sampling pole
5 approximately 8 feet up the north ditch from the tide gate to avoid comingling of
6 sample with discharge from the swirling confluence with the south ditch and effluent
7 from the west ditch.
8

9 i. Buse will properly maintain, replace and dispose of soiled surface booms and
10 include in its SWPPP a schedule for replacing the boom as necessary, but no less
11 frequently than every year, and properly disposing of soiled booms.
12

13 j. Within thirty days of the entry of this Consent Decree, Buse will update the
14 Facility's SWPPP to include a description of the berm on the southern border of the
15 facility and engineer approval of the berm. Buse will include in its SWPPP and at a
16 minimum employ the following berm-specific BMPs to ensure that no runoff from
17 Buse's yard enters the south ditch:
18

19 i. Closely inspect the south log yard and berm monthly for signs of
20 deterioration and/or seepage to ensure berm is maintained and
21 vegetated/stabilized;
22

23 ii. Keep equipment and facility operations a safe distance away from the
24 berm to prevent impacting or damaging the berm;
25

26 iii. Repair berm immediately if damaged or inspections reveal signs of
27 deterioration;
28

iv. Maintain full vegetative coverage or other form of stabilization of berm and buffer area. Replant vegetation as needed in the event of damage or die-off;

v. Maintain berm at a sufficient height to prevent overflow and seepage.

k. Within thirty days of the entry of this Consent Decree, Buse will replace the silt curtains and update its SWPPP to include regular silt curtain inspection and the following BMPs:

i. Clean or replace silt curtains immediately if inspection and/or benchmark exceedance reveals the need to do so;

ii. Include detailed silt curtain cleaning and replacement procedures in SWPPP to adequately protect against illicit discharge of solids in north ditch during silt curtain cleaning and replacement and require proper disposal of used silt curtains.

l. Within thirty days of the entry of this Consent Decree, Buse will provide a copy of the updated SWPPP to Soundkeeper for comments. Within thirty (30) days receipt of Soundkeeper's comments, Buse will make a good faith effort to respond and further revise the SWPPP as Buse's stormwater consultant deems appropriate.

m. Buse will, for a period of three (3) years beginning on the date that this Consent Decree is entered by the Court, forward copies to Soundkeeper of all written or electronic communications between it and Ecology related to the NPDES permit, the Clean Water Act, and stormwater discharges from the

1 Facility. During this same period, Buse shall forward copies to Soundkeeper of
2 all inspection reports and/or checklists of all visual monitoring conducted at the
3 Facility pursuant to the terms and conditions of the NPDES permit. All copies
4 shall be forwarded electronically to Soundkeeper on a quarterly basis and not later
5 than the forty-fifth (45th) day following the end of each calendar quarter.
6

7 8. Not later than seven (7) days after the entry of this Consent Decree by this Court,
8 Buse will pay four thousand dollars (\$4,000) to the Rose Foundation for Communities and the
9 Environment for a project or projects to improve or protect the water quality of Puget Sound as
10 described in **Attachment B** this Consent Decree. Checks will be made to the order of and delivered
11 to: The Rose Foundation for Communities and the Environment. Payment will include the following
12 reference in a cover letter or on the check: "Consent Decree, Puget Soundkeeper Alliance v. Buse
13 Timber & Sales, Inc." A copy of the check and cover letter, if any, will be sent simultaneously to
14 Puget Soundkeeper Alliance and its counsel.
15
16

17 9. Within seven (7) days of entry of this Consent Decree by the Court, Buse shall
18 pay Puget Soundkeeper Alliance's actual litigation fees, expenses, and costs (including
19 reasonable attorney and expert witness fees) incurred in this matter in the amount of forty
20 thousand dollars (\$40,000) by check payable and mailed to Smith & Lowney, PLLC, 2317 East
21 John St., Seattle, WA 98112, attn: Richard A. Smith. Buse's payment shall be in full and
22 complete satisfaction of any claims Puget Soundkeeper Alliance has or may have, either legal or
23 equitable, and of any kind or nature whatsoever, for fees, expenses, and costs incurred in the
24 litigation.
25
26
27

10. A force majeure event is any event outside the reasonable control of Buse that causes a delay in performing tasks required by this decree that cannot be cured by due diligence. Delay in performance of a task required by this decree caused by a force majeure event is not a failure to comply with the terms of this decree, provided that Buse notifies Puget Soundkeeper Alliance of the event; the steps that Buse will take to perform the task; the projected time that will be needed to complete the task; and the measures that have been taken or will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in completing the task.

Buse will notify Puget Soundkeeper Alliance of the occurrence of a force majeure event as soon as reasonably possible but, in any case, no later than thirty days after the occurrence of the event. In such event, the time for performance of the task will be extended for a reasonable period of time following the force majeure event.

By way of example and not limitation, force majeure events include

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods;
- c. Actions or inactions of third parties over which Buse has no control;
- d. Unusually adverse weather conditions;
- e. Restraint by court order or order of public authority;
- f. Strikes;
- g. Any permit or other approval sought by Buse from a government authority to implement any of the actions required by this consent decree where such approval is not granted or is delayed, and where Buse has timely and in good

1 faith sought the permit or approval; and

2 h. Litigation, arbitration, or mediation that causes delay.

3 11. This Court retains jurisdiction over this matter. And, while this Decree remains in
4 force, this case may be reopened without filing fee so that the parties may apply to the Court for any
5 further order that may be necessary to enforce compliance with this decree or to resolve any dispute
6 regarding the terms or conditions of this Decree. In the event of a dispute regarding implementation
7 of, or compliance with, this Decree, the parties must first attempt to resolve the dispute by meeting to
8 discuss the dispute and any suggested measures for resolving the dispute as provided in section 17 of
9 this Decree. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d),
10 regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any
11 prevailing or substantially prevailing party, will apply to any proceedings seeking to enforce the
12 terms and conditions of this Consent Decree.
13

14 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
15 can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days
16 following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and
17 the Administrator of the U.S. Environmental Protection Agency (EPA). Therefore, upon the filing of
18 this Consent Decree by the parties, Puget Soundkeeper Alliance will serve copies of it upon the
19 Administrator of the EPA and the Attorney General, with copy to Buse.
20

21 13. This Consent Decree will take effect upon entry by this Court. It terminates three (3)
22 years after that date, or 90 days after the parties' completion of all obligations imposed by this
23 Decree, whichever is later.
24

25 14. Both parties have participated in drafting this decree.
26

1 15. This Consent Decree may be modified only upon the approval of the Court.

2 16. If for any reason the court should decline to approve this Consent Decree in the form
3 presented, this Consent Decree is voidable at the discretion of either party. The parties agree to
4 continue negotiations in good faith in an attempt to cure any objection raised by the court to entry of
5 this Consent Decree.
6

7 17. Notifications required by this Consent Decree must be in writing. The sending party
8 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified
9 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized overnight
10 courier, with all fees prepaid; or (4) e-mail. For a notice or other communication regarding this
11 decree to be valid, it must be delivered to the receiving party at the one or more addresses listed
12 below or to any other address designated by the receiving party in a notice in accordance with this
13 paragraph 17.
14

15 **if to Puget Soundkeeper Alliance:**
16 Katelyn Kinn

17 **and to:**
18 Richard Smith
19 Smith & Lowney PLLC
20 2317 East John St.
21 Seattle, WA 98112
22 email: rasmithwa@igc.org

23 **if to Buse:**
24 Tom Parks

25 **and to:**
26 Mike Gossler
27 Montgomery Purdue Blankinship & Austin PLLC
28 701 Fifth Avenue, Suite 5500
29 Seattle, Washington 98104

 A notice or other communication regarding this Consent Decree will be effective when

received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing notice or other communication regarding this Consent Decree.


DATED this ____ day of _____, 2016.

HON. MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

Presented by:

MONTGOMERY PURDUE
BLANKINSHIP & AUSTIN PLLC

SMITH & LOWNEY, PLLC

By 
Michael E. Gossler WSBA #11044
Attorneys for Defendant Buse Timber &
Sales, Inc.

By s/ Richard A. Smith
Richard A. Smith WSBA #21788
Meredith A. Crafton WSBA #46558
Attorneys for Plaintiff
Puget Soundkeeper Alliance

CONSENT DECREE - 11
CASE No. 2:15-cv-01460-MJP

Smith & Lowney, p.l.l.c.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883



WASHINGTON STATE DEPARTMENT OF
Natural Resources
 Peter Goldmark - Commissioner of Public Lands

ATTACHMENT A

Caring for
 your natural resources
 ... now and forever

June 07, 2013

Buse Timber and Sales
 3812 28th PL NE
 Everett, WA 98201-8602

Subject: Holdover Notification for Aquatic Lands Lease No. 20-A12625

Dear Jamie:

The Department of Natural Resources ("DNR") issued Aquatic Lands Lease No. 20-A12625 ("Lease") to authorize your occupancy of the state-owned aquatic lands defined by the Lease as the "Property." The Lease will expire on 12/31/2014. If you continue to occupy the Property or your improvements remain on the Property after the expiration date, you will be a holdover tenant.

Consistent with the terms of the Lease and the law, as a holdover tenant you will remain subject to the terms and conditions of the Lease, including the obligation to remove improvements upon termination, except that you will be in a month-to-month periodic tenancy instead of a lease for term. Either you or DNR may terminate the holdover periodic tenancy by providing at least thirty (30) days notice to the other party. DNR's acceptance of your holdover status is not a waiver of any default nor is it a waiver of any obligation of the Tenant under the Lease.

Your rent will continue to be due and payable on the basis established by the Lease. DNR will continue to calculate your rent in accordance with the Lease. Collection of prepaid rent is a matter of administrative convenience and does not constitute the creation of more than a month-to-month tenancy. If the holdover tenancy terminates and you are not in default, DNR will refund the balance of any prepaid rent it received for any period after the date of termination.

DNR understands that you want to continue using the Property and we will continue to work with you to establish the terms and conditions of a new lease agreement. DNR's acceptance of your holdover status is temporary only. Please note that while you occupy the leasehold in holdover, DNR will not approve any new improvements. Like any property manager, the Department continually updates its lease documents and policies as new information becomes available. As the steward of Washington's state owned aquatic lands, the Department regularly researches and identifies practices to better protect the aquatic environment. Your new lease will not be the same as your existing lease. DNR may propose new practices to modernize your Plan of Operations in response to the site-specific conditions at the location of your leasehold and



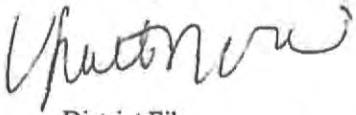
your facility. By initiating early review, you may avoid unnecessary expense and/or delays in processing your use or lease request.

If you have any questions or concerns, please contact Tammy ~~Olsen~~ ^{Anderson} at 360-854-2834.

Sincerely,

Yvette 854-2835

Yvette Novarro, Land Technician
Orca Straits District, Aquatics Resources Division
919 N. Township St.
Sedro Woolley, WA 98284



cc: District File
Aquatic Resources File, 20-A12625

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands

AQUATIC LANDS COMMERCIAL LEASE

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**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

**AQUATIC LANDS LEASE
(Commercial)**

AQUATIC LANDS LEASE NO. 20-A12625

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and BUSE TIMBER & SALES, INC., a Washington Corporation ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Union Slough, which Bedlands located in Snohomish County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined. State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Snohomish County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Lease are any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

1.2 Survey, Maps, and Plans. In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability

of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for log booming (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. The parties agree that this is a water-dependent use.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property. If Tenant fails to comply with all or any of the restrictions on the use of the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, then State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Ten (10) years (the "Term"), beginning on the 1st day of January, 2004 (the "Commencement Date"), and ending on the 31st day of December, 2014 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all renewal terms, shall not exceed Ten (10) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease.

Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

3.3 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.4 End of Term. Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

3.5 Hold Over. If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe the State all amounts due under RCW 79.01.760 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of Two Hundred Twenty Five and 94/100 Dollars (\$225.94). The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

4.2 Payment Place. Payment is to be made to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustments for Water-Dependent Uses.

- (a) **Inflation Adjustment.** State shall adjust water-dependent rent annually pursuant to RCW 79.90.450 -902, except in those years in which the rent is revalued under Subsection 4.4(b) below. This adjustment shall be effective on the anniversary of the Commencement Date.
- (b) **Revaluation of Rent.** State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the water-dependent Annual Rent in accordance with RCW 79.90.450-.902.
- (c) **Rent Cap.** After the initial year's rent is determined under Subsection 4.1, rent may increase by operation of Subsection 4.4(a) or 4.4(b). If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

SECTION 5 OTHER EXPENSES

During the Term, Tenant shall pay the following additional expenses:

- 5.1 Utilities.** Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.
- 5.2 Taxes and Assessments.** Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.
- 5.3 Right to Contest.** Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.
- 5.4 Proof of Payment.** Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provisions of Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not paid within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

6.4 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: 17 pilings. The improvements are not owned by State "Existing Improvements."

7.2 Tenant-Owned Improvements. So long as this Lease remains in effect, Tenant shall retain ownership of all authorized improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Tenant-Owned

Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 7.5 below. No Tenant-Owned Improvements shall be placed on the Property without State's prior written consent.

7.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Tenant-Owned), Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has approved those plans and specifications in writing and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for State's written consent shall be treated as waived, unless State notifies Tenant otherwise within the sixty (60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications. State's consent and approval shall not be required for any routine maintenance or repair of improvements made by the Tenant pursuant to its obligation to maintain the Property in good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Property.

7.4 Removal. Tenant-Owned Improvements shall be removed by Tenant by the Termination Date unless State notifies Tenant that the Tenant-Owned Improvements may remain. If the State elects for the Tenant-Owned Improvements to remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). To the extent that Tenant-Owned Improvements include items of personal property which may be removed from the leasehold premises without harming the Property, or diminishing the value of the Property or the improvements, the State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Lease. Any Tenant-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision. Tenant shall notify State at least one hundred eighty (180) days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed or elects to have them remain. Failure to notify Tenant shall be deemed an election by State that the Tenant-Owned Improvements will remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's actual or deemed consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand.

7.5 Unauthorized Improvements. Improvements made on the Property without State's prior consent pursuant to Subsection 7.3 or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall

immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.

- (a) With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
 - (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
 - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;

- (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
 - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
 - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

8.4 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (4) Any lien or action with respect to any of the foregoing; or,
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that

remediation or removal of Hazardous Substances is or may be required at the Property.

- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

8.5 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;
 - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
 - (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
 - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the

foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

- (b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

8.6 Cleanup. If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

8.7 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its

intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.

- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.

Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

8.8 Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon: (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

9.2 Event of Assignment. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

9.3 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

9.4 Terms of Subleases. All subleases shall be submitted to State for approval and shall meet the following requirements:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;

- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

9.5. Routine Subleasing of Moorage Slips. In the case of routine subleasing of moorage slips to recreational and commercial vessel owners for a term of one year or less, Tenant shall not be required to obtain State's written consent or approval pursuant to Subsection 9.1 or Subsection 9.4. Tenant shall be obligated to ensure that these moorage agreements conform to the sublease requirements in Subsection 9.4.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

10.2 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Five Thousand and 00/100 Dollars (\$5,000.), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental

Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as revaluation of the Annual Rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon a material change in the condition of any improvements; or,
- (4) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

- (b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

- (1) **Commercial General Liability Insurance.** Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) **Property Insurance.** Tenant shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.
- (3) **Worker's Compensation/Employer's Liability Insurance.** Tenant shall procure and maintain:
 - (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;

Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

Each Employee		Policy Limit
<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
\$1,000,000	\$1,000,000	\$1,000,000

Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.

- (4) **Builder's Risk Insurance.** As applicable, Tenant shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.

- (5) Business Auto Policy Insurance. As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (b) Terms of Insurance. The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:
- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
 - (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
 - (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant;
 - (4) All liability policies must provide coverage on an occurrence basis; and
 - (5) Liability policies shall not include exclusions for cross liability.

Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority.
- (c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

SECTION 12 DAMAGE OR DESTRUCTION

- (a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.
- (b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.
- (c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.

- (d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.
- (e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) **Taking.** The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is taken. A partial taking occurs when the taking does not constitute a total taking as defined above.
- (b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.
- (c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-Owned

Improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-Owned Improvements, and (c) in State-Owned Improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

- (a) Tenant shall be in default of this Lease on the occurrence of any of the following:
 - (1) Failure to pay Annual Rent or other expenses when due;
 - (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
 - (3) Failure to comply with any other provision of this Lease;
 - (4) Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by Tenant; or
 - (5) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.
- (b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within 60 after State provides Tenant with written notice of default, which specifies the nature of the default.
- (c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rent received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a

written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

SECTION 15 ENTRY BY STATE

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State:	DEPARTMENT OF NATURAL RESOURCES 919 N. Township Street Sedro-Woolley, WA 98284
Tenant:	BUSE TIMBER & SALES, INC. 3812 28 th Place N.E. Everett, WA 98205-3209

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

18.2 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

18.5 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

18.9 Invalidity. If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.


18.11 Recordation. Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

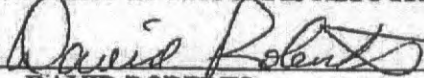
Dated: 3/15, 2007

BUSE TIMBER & SALES, INC.,
A Washington Corporation

By: 
RON SMITH
Title: CEO
Address: 3812 28th Place N.E.
Everett, WA 98205-3209

Dated: 3/30/, 2004

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

By: 
DAVID ROBERTS
Title: Aquatic Lands Assistant Region Manager
Address: 919 N. Township Street
Sedro-Woolley, WA 98284

Standard Commercial Lease
Approved as to Form in July, 2003
by Mike Grossmann
Assistant Attorney General
State of Washington

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

County of Skagit) ss

On this 30th day of March, 2004,
personally appeared before me DAVID ROBERTS, to me known to be the Aquatic
Lands Assistant Region Manager of the Department of Natural Resources, State of
Washington, who executed the within and foregoing instrument on behalf of the State
of Washington, and acknowledged said instrument to be the free and voluntary act and
deed of the State of Washington for the uses and purposes therein mentioned, and on
oath stated that he was authorized to execute said instrument and that the seal affixed is
the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
the day and year first above written.



DATED: March 30, 2004
Brenda L. Werden
Brenda L. Werden
Notary Public in and for the State of
Washington, residing at Sedro Woolley
My appointment expires Mar 27, 2006.

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

COUNTY OF SNOHOMISH) ss

On this 15 day of MARCH, 2004, before me personally
appeared RON SMITH to me known to be the CEO of the corporation that executed
the within and foregoing instrument, and acknowledged said instrument to be the free
and voluntary act and deed of said corporation, for the uses and purposes therein
mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.



DATED: 3/15/04
Loren W. Meade
Notary Public in and for the State of
Washington, residing at MARYSVILLE WA.
My appointment expires 5/23/04.

EXHIBIT "B"
AQUATIC LEASE 20-A12625

Operations: Buse Timber & Sales operates a log dewatering facility at the subject lease site and on adjacent upland property near the Buse Mill on Union Slough. This facility has been in continuous operation since the late 1950's.

The facility consists of a blacktopped access road, a rocked slough access ramp, pilings, a standing boom and pocket boomsticks. A log bronc (pond boat) is the only equipment on site. The access road, ramp and some of the pilings and boomsticks are located on patented property (see Exhibit "C") owned by the Buse family.

Log rafts are delivered to the site by tugboat via Steam Boat Slough to Union Slough and then down to the lease area just east of I-5. A typical log raft is 70'X 430', has 65 bundles (log truck loads) and has a scribner scale of 275 mbf. At high tide the head boomstick (west end of the raft) is released, swung north and tied off to the north pocket boomstick. The bundles are free to float with the out going tide between the pocket boomsticks to the slough access ramp. The bundles are then removed from the slough with the 988B CAT, loaded on off-highway trucks and delivered to the log yard south of the mill. The total operation takes less than three hours. Normally the rafts spend less than 24 hours in the lease area. While this facility is used for dewatering logs, it could be used to make log rafts by reversing the above noted procedure.

Development: Buse Timber & Sales has no plans to expand or change the use of the lease area. It is agreed that all pilings and log rafts will remain inside the lease area.

Maintenance: Piling and boomsticks on the lease area are in fair to good shape; there are no plans to replace pilings for the next 5 years. If pilings do need to be replaced it is agreed that only non-treated or steel pilings will be used. The work will be done outside of the fish closure window and all regulatory permits will be obtained prior to work.

Environmental: The following list of concerns have been identified and addressed:

While dewatering, the boom pocket is a contained area, except for a small opening to the North West corner between the bank and the standing boom.

1. **Oil & Fuel Spill Prevention:** Only the pond boat and the 988B CAT pose any oil or fuel hazard. Both machines receive regular maintenance and inspection. Steam cleaning the 988B CAT is part of this maintenance. A spill response kit has been on site since the early 1990's. This kit is located within 30 feet of the ramp to the standing boom, which is next to the opening noted above. Should a spill occur an absorbent boom could be tied between the standing boom and the shoreline to contain the spill. The spill kit will be checked before each dewatering.

EXHIBIT "B"
AQUATIC LEASE 20-A12625

2. **Floating Bark and other Debris:** Provisions will be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. The lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased are by using the pocket boomsticks to collect river debris as it moves down stream. Log rafts contain bark and other floating debris. The dewatering operation removes small amounts of bark from the logs. Some of this material escapes through the opening noted above on the out going tide. A bark/trash containment screen that can be cleaned will be installed by November 1, 2003. The lessee will also prevent free rolling and tumbling of logs in the lease area.
3. **Sunken Bark:** Over the years a small amount of sunken bark has been observed on the beach between the north standing boom and the south pocket boomsticks. On September 8, 2003 during a -.9' tide this bark was manually picked up and mixed with our mill bark system. Sunken bark accumulations will be regularly monitored and disposed of in the same manner during the term of this lease.

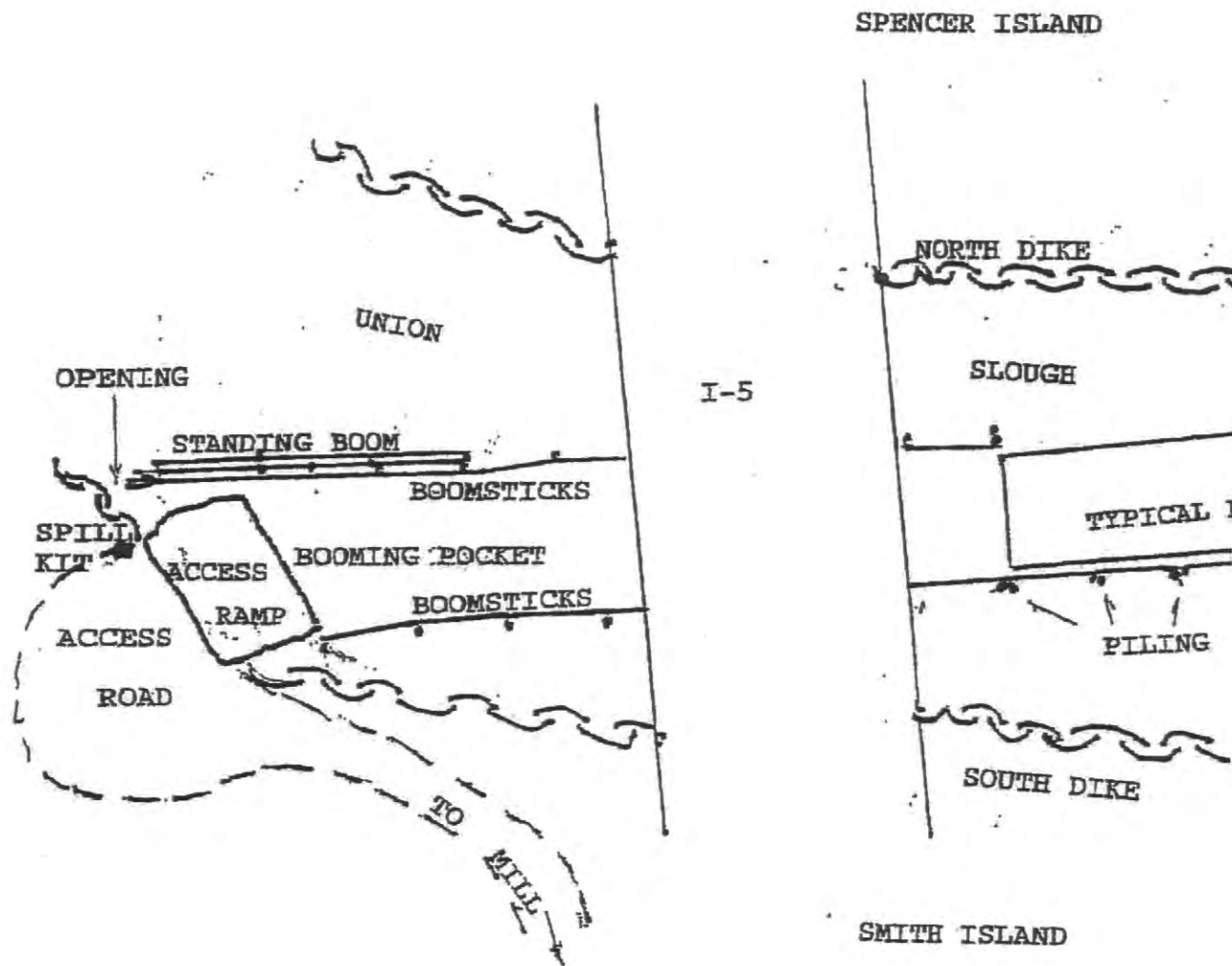
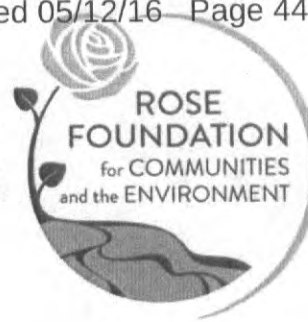


EXHIBIT "C" BUSE TIMBER & SALES / DNR LEASE #20-A12625
LOG DEWATERING / BOOMING OPERATION 1

9/6/03

ATTACHMENT B

1970 BROADWAY, SUITE 600, OAKLAND, CA 94612-2218
ROSE@ROSEFDN.ORG



WWW.ROSEFDN.ORG

OFFICE: 510.658.0702
FAX: 510.658.0732

May 9, 2016

Thomas W. Swegle
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: Puget Soundkeeper Alliance v. Buse Timber & Sales, LLC (Case No: 2:15-CV-01460-MJP)

Dear Mr. Swegle,

This letter is intended to provide assurance that I have received the proposed Consent Decree between Puget Soundkeeper Alliance and Buse Timber & Sales, LLC and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from Buse Timber as specified in the Consent Decree.
- 2) The Rose Foundation shall only use these Buse Timber funds to improve or protect the water quality of Puget Sound, and shall disperse them through the Rose Foundation's Puget Sound Stewardship & Mitigation Fund, a grantmaking fund which is wholly dedicated to supporting projects which benefit the water quality of Puget Sound. Since the location of the Buse Timber facility is in the Snohomish River watershed, the Rose Foundation shall give preference towards projects that are intended to improve or protect the water quality in the Snohomish River watershed and adjacent coastal waters of Puget Sound.
- 3) After the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Consent Decree.

Rose Foundation for Communities and the Environment

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Rose Foundation does not support lobbying activities that are

prohibited by Section 501(c)(3) of the IRS Code, and no portion of the Buse Timber funds shall be used to support any political lobbying activities whatsoever.

- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website www.rosefdn.org.

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or tlittle@rosefdn.org.

Sincerely,



Tim Little, Executive Director